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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID WAITE,

Defendant.

MOTION TO DISMISS

Case No. 2:09 CR 290 DAK

Honorable Dale A. Kimball

Defendant, DAVID WAITE (“Waite”), by and through his attorney, Henri Sisneros, hereby files this Motion to Dismiss the Indictment on the grounds set forth below. Additionally, Waite respectfully requests that this Court set the matter for status conference to set a briefing schedule for the instant motion and further requests the Court strike the current jury trial date.

The grounds for the Motion are set forth below:

1. The United States’ failure to allege in the Indictment that Waite knew that the archaeological resources he allegedly sold had been illegally removed from public lands fails to allege the essential *mens rea*, and thus, it is fatally defective due to failure to allege an element of the offense and must be dismissed.

2. In the alternative, if the Court determines that the Indictment is sufficient and alleges all necessary elements of the offense, the statutes' failure to require *mens rea* is unconstitutional and violates the defendant's under the Constitution.

3. The Indictment charges that Waite knowingly sold an archaeological resource which had been illegally obtained from federal land. The statutes under which he is being prosecuted fail to provide fair warning that he did not need actual knowledge that the items were removed from federal land to be prosecuted. The statutes fail to give a person of ordinary intelligence adequate notice that when buying or selling historic artifacts, one may be held liable for dealing in items illegally obtained from federal land even without any reasonable basis for suspecting the items are illegal in origin. Therefore, the statutes are unconstitutional as applied.

CONCLUSION

Based on the foregoing, Waite respectfully asks that this Court grant his Motion to Dismiss, and dismiss the Indictment with prejudice.

DATED this 23rd day of April, 2010.

/s/ Henri Sisneros

HENRI SISNEROS

Assistant Federal Defender

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on the 23rd day of April, 2010, a true and correct copy of the foregoing **MOTION TO DISMISS** was electronically filed with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the following:

Carlie Christensen
First Assistant United States Attorney

Richard D. McKelvie
Assistant United States Attorney

Cy H. Castle
Assistant United States Attorney

/s/ V. Williams
UTAH FEDERAL DEFENDER OFFICE